

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERIN HOWARD FISCHER,  
Plaintiff,

v.

WINCHESTER MYSTERY HOUSE, *et al.*,  
Defendants.

Case No. [14-cv-01593-JD](#)

**ORDER REVOKING PLAINTIFF'S IN  
FORMA PAUPERIS STATUS AND  
DENYING MOTION FOR RELIEF  
FROM JUDGMENT**

Plaintiff, a patient at a state hospital, filed a pro se civil rights complaint under 42 U.S.C. § 1983 that was dismissed for failure to state a claim and lack of jurisdiction. Plaintiff has filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b). Plaintiff has also filed an appeal with the Ninth Circuit and the case has been referred back to this Court for the limited purpose of determining whether plaintiff's in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith.

Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *School Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

In this case, there were no allegations that anyone acted under the color of state law or that plaintiff was deprived of a Constitutional right. There was no diversity between the parties to allow for jurisdiction and plaintiff presented only conclusory allegations about a purported business deal from forty years ago. In the motion for relief from judgment, plaintiff presents no new evidence or any arguments about why the Court's ruling was incorrect. The motion is denied.

1 An indigent party who cannot afford the expense of pursuing an appeal may file a motion  
2 for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant  
3 to Federal Rule of Appellate Procedure 24(a), “a party to a district-court action who desires to  
4 appeal in forma pauperis must file a motion in the district court.” The party must attach an  
5 affidavit that (1) shows in detail “the party’s inability to pay or give security for fees and costs,”  
6 (2) “claims an entitlement to redress,” and (3) “states the issues that the party intends to present on  
7 appeal.” Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, “an  
8 appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in  
9 good faith.” 28 U.S.C. § 1915(a)(3). An appeal is in “good faith” where it seeks review of any  
10 issue that is “non-frivolous.” *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).  
11 An issue is “frivolous” if it has “no arguable basis in fact or law.” See *O’Loughlin v. Doe*, 920  
12 F.2d 614, 617 (9th Cir. 1990).

13 Because this case did not involve the deprivation of a Constitutional right, no party acted  
14 under color of state law and as there was no diversity between the parties, the appeal is meritless  
15 and frivolous. Therefore, plaintiff’s in forma pauperis status is **REVOKED**. The Clerk shall  
16 forward this Order to the Ninth Circuit in case No. 14-16158. Plaintiff’s motion for relief from  
17 judgment (Docket No. 34) is **DENIED**.

18 **IT IS SO ORDERED.**

19 Dated: July 9, 2014

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22 JAMES DONATO  
23 United States District Judge  
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